

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Darryl J. Blankenship,
Petitioner

v. Case No. 1:03-cv-133

James Haviland,
Respondent

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed June 24, 2005 (Doc. 11).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is ORDERED that the Report and Recommendation of the Magistrate Judge is hereby ADOPTED and Petitioner's petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is DISMISSED without prejudice to refiling as an action pursuant to 42 U.S.C. § 1983.

A certificate of appealability will not issue because, petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this proceeding. *See* 28 U.S.C. § 2253(c); Fed.R. App. P. 22(b).

This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith for the purposes of granting Petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117

F.3rd 949, 952 (6th Cir. 1997).

This action is closed.

July 19, 2005
Date

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Judge